

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

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DELAWARE P.S.C.

IN THE MATTER OF INTEGRATED)
RESOURCE PLANNING FOR THE)
PROVISION OF STANDARD OFFER) PSC DOCKET NO. 07-20
SUPPLY SERVICE BY DELMARVA)
POWER & LIGHT COMPANY)

Rule 28 Interlocutory Appeal of Ruling on Petition for Leave to Intervene of Alan Muller

Pursuant to Rule 28 of the Delaware Public Service Commission, I make this Interlocutory Appeal:

Statement of the Case

1. On February 22, 2007, I Petitioned the Commission to for Leave to Intervene in the above-captioned Public Service Commission Docket.
2. On March 1, 2007, William O'Brien, Hearing Examiner, made the following ruling regarding my Petition, as well as the Petitions of two other parties:

I approve, under certain conditions, Dr. Firestone's, Mr. Muller's and Ms. McGonegal's petitions, so that they may represent their interests as residents of Delaware concerned with the IRP's impact on the environment and public health. (See the Commission's Rules of Practice and Procedure, Rule 21(d), authorizing the Hearing Examiner to prescribe reasonable conditions on the approval of intervention petitions.)

Because their interests in the IRP as Delaware residents concerned with the environment are substantially the same, Dr. Firestone, Mr. Muller and Ms. McGonegal may act as one party, with one voice. As such, they will submit one filing with each deadline and will appear as one party at all proceedings. In this way, we will not have parties whose interests are represented by other parties (as referenced in Rule 21(a)(iii)) and we can avoid duplicative submissions and responses throughout the life of this docket.

Dr. Firestone, Mr. Muller and Ms. McGonegal should confer with each other and advise me, with the March 7th filing in this case, who

their lead representative will be. The lead representative's name will be the name of the party. In the event that they cannot agree, I will direct Dr. Firestone as the lead, for the reasons stated in his intervention petition, at paragraphs 26, and 34 through 46 (and because his was the only intervention petition of the three that was filed in compliance with the "original and ten (10) copies" requirement of Rule 6(c), which requirement was highlighted in e-mails dated February 19 and February 23, 2007). If any of the three would prefer not to participate in this manner, then I can move that individual (or individuals) to the "non-party, e-mail only" portion of the service list, if they wish. In this way, they will receive copies of all the submissions and can be heard separately as non-party members of the public.

Summary of my Position

3. The above characterization of my Intervention and interests is incorrect in that by my prior Interventions and participation, and by my Petition in this docket, my interests are broader than "environmental" and are not the same as the other parties, to wit:
 - a. I have a long history of participating in Integrated Resource Plan dockets, and have demonstrated in my participation the breadth of my concern, particularly in areas particular to IRP, including energy planning and associated issues of cost, demand and load service needs, cost of renewable options when compared with other options, impacts on ratepayers, taxpayer and the public generally, the broad public interest and policy impacts, and the long term impacts of the specific range of energy supply options presented. This goes far beyond a narrow characterization of my interest as "environmental" interests as stated in the ruling. For example, I represented the Sierra Club in Docket 92-98 (IN THE MATTER OF THE APPLICATION OF DELVARVA POWER AND LIGHT COMPANY FOR COMMISSION ACKNOWLEDGEMENT OF AN INTEGRATED RESOURCE PLAN, filed on December 11, 1992.)
 - b. My interests are different than those of the other parties and are not represented by any other party. Ms. McGonegal has a demonstrated record of activism on issues much broader than the strict "environmental" characterization, and while intersecting with my interest at points, is also distinct from my interests. Mr. Firestone and Ms. McGonegal have not participated in a Delaware PSC Integrated Resource Plan Docket, and have no precedent as Interveners .
4. Although I have no objection to working with Mr. Firestone and have made an inquiry regarding cooperative submission of an Interlocutory Appeal, given

the oppositional tone of Mr. Firestone's letter and his separate Interlocutory Appeal, I believe there is little chance of a collaborative effort in this regard.

5. The ruling is not equitable. It states that by grouping the individual Interveners together "we will not have parties whose interests are represented by other parties... and we can avoid duplicative submissions and responses throughout the life of this docket." Ruling, p. 2. However, the utility and power producer Petitioners with only economic interests were not grouped together to participate with "one voice." The ruling recognized the discrete distinctions of those with economic interests, and must also recognize the discrete distinctions of those intervening with other interests and similarly grant Petitioning individuals full-party Intervention status.
6. Pursuant to an email received from Hearing Examiner William O'Brien, my Intervention Petition was timely filed electronically. The requisite number of paper copies with certificate of service were brought by hand to the hearing.

Grounds Supporting Interlocutory Appeal

7. This Interlocutory Appeal was invited and is provided for in the rules. Ruling, March 1, 2007; Rule 28.
8. The March 1, 2007, ruling is contrary to practice and rule. It has been the practice of the Delaware Public Service Commission to favor interventions, recognizing that the public interest is better served when a broad range of interests is represented. The rule presumes reasonable terms and conditions. Rule 21(d). Intervention is to facilitate participation, not limit it. My history of participation and the precedent of Commission rule on my prior Interventions demonstrates that my Intervention is in the public interest.
9. No other party adequately represents my interests in this matter. As noted in my Petition, the Delaware Division of Public Advocate does not represent my interests, nor do the utility Interveners, and my interests are distinct from those of the other individual Interveners. Rule 21(a)(iii).
10. It is correct that the rule states that intervening parties make "a concise statement of why the Petitioner's interest will not be represented by the parties to the proceeding **OR** why participation in the proceeding would be in the public interest. Rule 21(a)(iii).
11. At the time of my Petition, there were no parties to the proceeding! If the Commission finds that I should make a more specific statement as to my interests compared with the interests of other now known Petitioners, I will submit a revised Petition. Rule 21(a)(iii).

12. The purpose of Intervention is to aid in informing the record from varying perspectives. I have been granted full-party Intervention status in the past, have a long history of significant contributions to prior dockets, and this ruling is contrary to Commission practice.
13. It is inequitable to recognize the discrete distinctions of utility and power producer Petitioners with a similar economic interest in the proceeding and grant Intervention to each, yet minimize and discredit the discrete and distinct interests of individuals by refusing them separate Intervention. There is no authority under Commission rules to order interveners to "act as one party, with one voice... submit one filing with each deadline and... appear as one party at all proceedings" and instead, the rule requires that terms and conditions be reasonable. Rule 21(d).
14. Mr. Firestone has stated in his letters and appeal that he does not wish to represent me, not do I wish to represent him.

WHEREFORE I request that the Commission:

- Reconsider the Ruling of March 1, 2007; and
- Find that individual Intervenors have distinct interests; and
- Grant my Petition for Leave to Intervene, separately and individually with full party status and all according rights and responsibilities of a party to allow me full participation without any discrimination; and
- If the Commission finds Petition insufficiently distinguishes my interest in this proceeding when compared with other now known Petitioners, that I may amend my Petition; and
- If filing is deemed insufficient, grant leave to perfect filing; and
- Such other relief as is warranted by the Commission.

Respectfully submitted,

[signed]

Alan Muller
Box 69
One Stewart Street

Dated: March 5, 2007

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CERTIFICATE OF SERVICE

**I hereby certify that I have served the within Rule 28 Interlocutory Appeal of
Ruling on Petition for Leave to Intervene of Alan Muller**

BY HAND

**(Ten copies) upon the offices of the Delaware Public Service Commission in Dover,
Delaware, and upon the service list electronically.**

Signed,

**Alan Muller
March 5, 2007**